

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1333/March 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS

:
:

PREHEARING ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on February 18, 2014, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on SEC v. Small Business Capital Corp., No. 5:12-cv-3237 (N.D. Cal. Nov. 6, 2013), appeal pending, No. 13-17304 (9th Cir.), in which Respondent Mark Feathers (Feathers) was enjoined against violations of the antifraud and registration provisions of the federal securities laws. A prehearing conference was held yesterday. Both parties appeared.

The undersigned addressed some of the arguments that Feathers has made in his Answer and in other communications. He has stated that SEC v. Small Business Capital Corp. was wrongly decided and that Commission staff engaged in misconduct in that case. It is well established, however, that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713 & n.13, petition for review denied, No. 285 F. App'x 761 (D.C. Cir. 2008); Michael J. Markowski, 55 S.E.C. 21, 26-27, (2001), pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). See also Marshall E. Melton, 56 S.E.C. 695, 697-700, 709-13 (2003). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n. 15.

Further, the issues in the OIP in this proceeding concern Feathers, not the Commission, and thus his allegation of misconduct by Commission staff in SEC v. Small Business Capital Corp. is not relevant to the issues in this proceeding. Any challenge to the propriety of the staff's conduct should have been brought before the court in which that case was heard. Harold F. Crews, 87 SEC Docket 350, 359 (Jan. 13, 2006). In sum, Feathers's means of challenging the validity of the injunction against him is through an appeal to the Court of Appeals for the Ninth Circuit, which he is pursuing. Vladislav Steven Zubkis, 58 S.E.C. 1014, 1020-21 & n.19 (2005).

The Division of Enforcement was granted leave, pursuant to 17 C.F.R. § 201.250, to file a motion for summary disposition. The motion for summary disposition will be due April 7, 2014. An opposition may be filed by May 5, 2014, and a reply, by May 12, 2014. Feathers may file a motion for summary disposition according to the same schedule.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge